

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WILLIAM E. JONES, JR., #189783,

Petitioner,

v.

ACTION NO. 2:10cv444

HAROLD W. CLARKE,¹
Director of the Virginia
Department of Corrections, et al.,

Respondents.

**UNITED STATES MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

Petitioner, a Virginia inmate, filed a pro se petition, pursuant to 28 U.S.C. § 2254 on May 28, 2010 (Action No. 2:10cv255). The petition alleges the Virginia Department of Corrections Court and Legal Unit have miscalculated his revocation sentence and have refused to manually calculate his sentence. Respondent filed a Motion to Dismiss the petition on September 3, 2010.

On September 8, 2010, Petitioner filed a document entitled "Petition for Writ of Mandamus." The typed document was originally filed in the Circuit Court for the City of Richmond, and includes the handwritten notation "See Exhibit O" at the top. The document has been conditionally filed in this Court as a new petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 with the Action Number 2:10cv444.

On October 8, 2010, Petitioner was ordered to inform the Court whether the "Petition for

¹ It is ORDERED that the petition shall be deemed amended to substitute as the sole respondent in this proceeding Harold W. Clarke, Director of the Virginia Department of Corrections. See Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts (foll. 28 U.S.C. § 2254).

Writ of Mandamus" was intended to be a new petition for writ of habeas corpus, or was intended to be an exhibit to the original 28 U.S.C. § 2254 habeas corpus petition filed May 28, 2010. Petitioner responded to the order on November 9, 2010, explaining "that the Petition for Writ of Mandamus filed September 8, 2010 was NOT intended to be a new petition for writ of habeas corpus, but was intended be (sic) used as an exhibit only (Exhibit O)."

For the foregoing reasons, the Court recommends the petition for writ of habeas corpus in Action No. 2:10cv444 be DISMISSED. By copy of this Report and Recommendation, Petitioner is notified that pursuant to 28 U.S.C. § 636(b)(1)(c):

1. Petitioner may file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, see 28 U.S.C. § 636(b)(1), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure, plus three (3) days permitted by Rule 6(d) of said rules.

2. A district judge shall make a *de novo* determination of those portions of this Report or specified findings or recommendations to which objection is made.

Petitioner is further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this court based on such findings and recommendations. *Thomas v. Arn*, 474 U.S. 140 (1985); *Carr v. Hutto*, 737 F.2d 433 (4th Cir. 1984), *cert. denied*, 474 U.S. 1019 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984).

/s/

Tommy E. Miller
United States Magistrate Judge

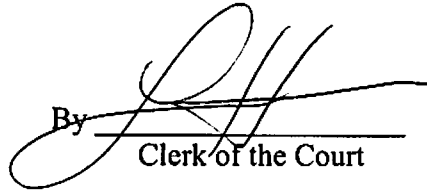
Norfolk, Virginia
February 11, 2011

CLERK'S MAILING CERTIFICATE

A copy of the foregoing Report and Recommendation was mailed this date to the following:

William E. Jones, Jr., #189783
St. Brides Correctional Center
Post Office Box 16482
Chesapeake, Virginia 23328

Fernando Galindo, Clerk

By 
Clerk of the Court

February 11, 2011